

FEB 24 2006

**Board of Vocational Nursing  
and Psychiatric Technicians**

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**BEFORE THE  
THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. PT-2004-92

EUGENE LYLE DEMPSEY, JR.  
AKA GENE DEMPSEY  
5275 Capistrano  
Atascadero, CA 93422

**ACCUSATION**

Psychiatric Technician License No. 24056

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this  
Accusation solely in her official capacity as the Executive Officer of the Board of Vocational  
Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about August 21, 1985, the Board of Vocational Nursing and  
Psychiatric Technicians (Board) issued Psychiatric Technician License Number 24056 to Eugene  
Lyle Dempsey, Jr. aka Gene Dempsey (Respondent). The Psychiatric Technician License  
expired on March 15, 2006, and has not been renewed.

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## JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All Section references are to the Business and Professions Code (Code) unless otherwise indicated.

## STATUTORY PROVISIONS

4. Section 118, subdivision (b) of the Code provides that the expiration, expiration, surrender or cancellation of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 4545 of the Code, the Board may renew an expired license at any time within four years after the expiration.

5. Code section 490 states, in pertinent part, the following:

"A Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 4520 states, in pertinent part, that the Board may discipline any licensed psychiatric technician for any reason provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code § 4500, et. seq.)

7. Section 4521 states, in pertinent part:

"The board may suspend or revoke a license issued under this chapter [the Psychiatric Technicians Law (Bus. & Prof Code, 4500, et seq.)] for any of the following reasons:

(a) Unprofessional conduct, which includes, but is not limited to, any of the following:

1                   .....  
2                   (5)    Use any controlled substance as defined in Division 10 (commencing with  
3   Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022,  
4   or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself,  
5   any other person. . . .

6                   .....  
7                   (f)    Conviction of any offense substantially related to the qualifications,  
8   functions, and duties of a psychiatric technician, in which event the record of the conviction shall  
9   be conclusive evidence of the conviction. The board may inquire into the circumstances  
10  surrounding the commission of the crime in order to fix the degree of discipline. . . .

11                   .....  
12                   (7)    Be committed or confined by a court of competent jurisdiction for  
13  intemperate use of or addiction to the use of any of the substances described in paragraphs (4)  
14  and (5), in which event the court order of commitment or confinement is prima facie evidence of  
15  the commitment or confinement.

16                   .....  
17                   (b)    Procuring a certificate or license by fraud, misrepresentation, or mistake.”

#### 18                   REGULATORY PROVISIONS

19                   8.    California Code of Regulations, title 16, section 2578, states:  
20                   “For the purposes of denial, suspension, or revocation of a license  
21  pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
22  crime or act shall be considered to be substantially related to the qualifications, functions or  
23  duties of a licensed psychiatric technician if to a substantial degree it evidences present or  
24  potential unfitness of a licensed psychiatric technician to perform the functions authorized by his  
25  license in a manner consistent with the public health, safety, or welfare. . . Such crimes or acts  
26  shall include but not be limited to those involving the following:

27                   (a)    Procuring a license by fraud, misrepresentation, or mistake.  
28                   .....

1 (c) Violating or attempting to violate, directly or indirectly, or assisting in or  
2 abetting the violation of, or conspiring to violate any provision or term of Chapter 10, Division 2  
3 of the Business and Professions Code.

4  
5 (f) Any crime or act involving the sale, gift, administration, or furnishing of  
6 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business  
7 and Professions Code."

#### 8 9 **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

10 9. Methamphetamine, a central nervous system (CNS) stimulant, is a  
11 Schedule II controlled substance as designated by Health and Safety Code section 11055,  
12 subdivision (d)(2), and is categorized as a dangerous drug pursuant to Business and Professions  
13 Code section 4022.

#### 14 **COST RECOVERY**

15 10. Section 125.3 of the Code provides, in pertinent part, that a Board may  
16 request the administrative law judge to direct a licensee found to have committed a violation or  
17 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
18 and enforcement of the case.

#### 19 **FIRST CAUSE FOR DISCIPLINE**

##### 20 **(Conviction of a Substantially Related Crimes)**

21 11. Respondent is subject to disciplinary action pursuant to section 490 and  
22 4521, subdivision (f), as defined by California Code of Regulations, title 16, section 2578, in that  
23 Respondent has committed crimes substantially related to the qualifications, functions, and duties  
24 of a licensed Psychiatric Technician, based on the acts set forth below.

25 a. On or about November 1, 2004, after a plea of no contest, Respondent was  
26 convicted of a misdemeanor violating Health and Safety Code section 11550(a) [under the  
27 influence of a controlled substance] in a criminal proceeding entitled *The People of the State of*  
28 *California v. Eugene Lyle Dempsey, Jr.* (Super. Ct. San Luis Obispo County, 2004, No.

1 M000358817).) The Court sentenced Respondent to two days in jail. Additionally, the Court  
2 fined Respondent a total of \$415.74, and placed him on probation for a period of 3 years. The  
3 circumstances surrounding the conviction are that on or about June 20, 2004, two Atascadero  
4 Police officers responded to a routine disturbance call stating that Respondent was causing a  
5 disturbance at his grandmother's residence. When officers arrived, Respondent was questioned  
6 and responded with rapid speech, his jaw and facial muscles were rigid, and his hands were  
7 fidgety. Based on Respondent's objective symptomology, he was arrested for being under the  
8 influence of a controlled substance;

9           b.       On or about January 27, 2005, after entering a plea of no contest,  
10 Respondent was convicted on two misdemeanor counts including one count for violating Penal  
11 Code section 484 (a) [petty theft], and one count for violating Penal Code section 166 (c)(1)  
12 [willfully and knowingly violating a stay away order], in a criminal proceeding entitled *The*  
13 *People of the State of California v. Eugene Lyle Dempsey, Jr.* (Super. Ct. San Luis Obispo  
14 County, 2005, No. M000367856).) The circumstances surrounding the conviction are that on or  
15 about December 14, 2004 through January 24, 2005, Respondent while volunteering to help pick  
16 up donated items for Project Amend stole a computer, bike, and \$95.00 cash. On or about  
17 January 24, 2005, San Luis Obispo Police Officer, arrived at Respondent's ex-wife's residence  
18 who turned over the stolen items that were brought by Respondent. Respondent was then  
19 arrested. Respondent was also in violation of an existing restraining order against his ex-wife.  
20 The Court sentenced Respondent to 30 days in jail. Additionally, the Court fined Respondent a  
21 total of \$536.00, and placed him on probation for a period of 2 years;

22           c.       On or about April, 4, 2006, Respondent was rearrested by the San Luis  
23 Obispo Sheriff's for violation of probation and pled guilty to that violation. Respondents' terms  
24 of probation were modified and Respondent was ordered to pay additional fines. A probation  
25 report was submitted to the Court stating that Respondent had violated his probation by failing to  
26 pay the required fines. A probation revocation hearing arraignment was scheduled for September  
27 5, 2006. On or about September 5, 2006, a bench warrant was issued by the Court for  
28 Respondent's arrest due to Respondents' failure to appear at the probation violation arraignment

1 as ordered in Case No. M000267856. The Court sentenced Respondent to 100 days in jail and  
2 placed him on probation for a period of 18 months;

3 d. Respondent submitted an application for renewal of his license to the  
4 Board without disclosing any of his prior convictions.

## 5 **SECOND CAUSE FOR DISCIPLINE**

### 6 **(Unprofessional Conduct)**

7 12. Complainant refers to, and by this reference incorporates the allegations  
8 set forth above in paragraph 11 inclusive, as though set forth fully.

9 13. Respondent is subject to disciplinary action under section 4521,  
10 subdivision (a), in that Respondent committed acts of unprofessional conduct as more fully set  
11 forth above in paragraph 11, inclusive.

## 12 **THIRD CAUSE FOR DISCIPLINE**

### 13 **(Unprofessional Conduct/Dangerous Use of Controlled Substances)**

14 14. Complainant refers to, and by this reference incorporates the allegations  
15 set forth above in paragraph 11, inclusive, as though set forth fully.

16 15. Respondent is subject to disciplinary action under section 4521,  
17 subdivision (a) (5), in that, as described in paragraph 11, subparagraphs (a), (b), and (c),  
18 Respondent was convicted of a misdemeanor and a felony involving the dangerous use and being  
19 under the influence of a dangerous controlled substance. Complainant refers to, and by this  
20 reference incorporates the allegations set forth above in above in paragraph 14, subparagraphs  
21 (a), (b), and (c), inclusive, as though set forth fully.

## 22 **FOURTH CAUSE OF ACTION FOR DISCIPLINE**

### 23 **(Confinement by a Court of Use of Illegal Substances)**

24 16. Complainant refers to, and by this reference incorporates the allegations  
25 set forth above in paragraph 11, subparagraphs (a), (b), and (c), inclusive, as though set forth  
26 fully.

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28 ///



1           17.     Respondent is subject to disciplinary action under section 4521,  
2 subdivision a (7), on the grounds that he was confined by the superior court to a jail term based  
3 on his use of or addiction to methamphetamine.

4                   **FIFTH CAUSE OF ACTION FOR DISCIPLINE**

5                   **( Procuring License by Fraud, Misrepresentation and/or Mistake)**

6           18.     Complainant refers to, and by this reference incorporates the allegations  
7 set forth above in paragraph 11, subparagraphs (a), (b), and (c), inclusive, as though set forth  
8 fully.

9           19.     Respondent is subject to disciplinary action under section 4521,  
10 subdivision b, and California Code of Regulations, title 16, subdivision a based on the fact that  
11 he procured his license by fraud, misrepresentation and/or mistake due to his failure to disclose  
12 any prior convictions on his 2005 renewal application.

13                   **ADDITIONAL DISCIPLINARY CONSIDERATIONS**

14           20.     Respondent's pattern of unlawful conduct over time should be considered  
15 in determining the proper disciplinary measures to impose. This conduct includes the following:

16           (a)     On or about May 24, 1996, after a plea of no contest, Respondent was  
17 convicted of one count of a felony violating Health and Safety Code section 11377 (a) [possessing  
18 a controlled substance] in a criminal proceeding entitled *The People of the State of California v.*  
19 *Eugene Lyle Dempsey, Jr.* (Mun. Ct., San Luis Obispo County, 1996, No. F000242407).) The  
20 Court sentenced Respondent to 90 days in jail. Additionally, the Court fined Respondent a total  
21 of \$1,250.00 plus additional administrative fees, and placed him on probation for a period of 36  
22 months. The circumstances surrounding the conviction are that on or about March 29, 1996  
23 defendant was arrested for possession of methamphetamine; and.

24           (b)     On or about March 20, 1998 Defendant was sentenced to a two year prison  
25 term for possession of controlled substance in violation of Health and Safety Code section  
26 11377(a).

27                   **PRAYER**

28           WHEREFORE, Complainant requests that a hearing be held on the matters herein


1 alleged, and that following the hearing, the Board issue a decision:

- 2           1.     Revoking or suspending Psychiatric Technician License Number 24056,  
3 issued to Respondent;
- 4           2.     Ordering Respondent to pay the Board the reasonable costs of the  
5 investigation and enforcement of this case, pursuant to Code section 125.3; and
- 6           3.     Taking such other and further action as deemed necessary and proper.

7

8 DATED: February 24, 2009

9

10   
11 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
12 Executive Officer  
13 Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
Complainant

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